

## **FIRST AMENDMENT TO DEVELOPMENT COVENANT**

This First Amendment is made as of the 24<sup>th</sup> day of March, 2011, to a Development Covenant ("Covenant") dated June 6, 2007, by and between The CITY OF SOMERVILLE, a Massachusetts municipal corporation with a usual address of 93 Highland Avenue, Somerville, MA (the "City") and DARIN S. SAMARAWEEERA and EDWARD B. TOBIN, as TRUSTEES of MASTER CLYDE STREET ACQUISITION REALTY TRUST (successor in title to 56 Clyde Street Acquisition LLC and 61 Clyde Street Acquisition LLC), u/d/t dated May 20, 2010, filed with the Land Court section of the Middlesex South District Registry of Deeds as Document No. 1533447 noted on Certificate of Title No. 246492 in Book 1384, Page 125, and with the recorded land section of said Deeds as Instrument No. 87208 in Book 54759, Page 344, with a usual address of 20 Park Plaza, Suite 468, Boston, MA 02116 ( the "Developer").

WHEREAS, the Developer owns property at 56 and 61 Clyde Street, Somerville, Middlesex County, known as Max Pak Square ("Max Pak Square" or the "Property"); and

WHEREAS, the City's Planning Board granted a Special Permit with Site Plan Review ("SPSR") for development at the Property in Case #PB-2008-R-1110; and

WHEREAS, the Developer has sold a parcel (the "D Parcel") that was formerly part of the Property to The Residences at Max Pak Square, LLC, and the City has issued permits to the buyer of the D Parcel to construct Buildings D-1, D-2, and D-3 with a total of fifteen (15) townhouses; and

WHEREAS, of the 199 residential units allowed by the Covenant, the Developer intends to construct the remaining 184 residential units in four buildings: Building A, Building B, Building C, and Building E; and

WHEREAS, the accommodation of union labor and non-union labor will affect access to the Property during construction and necessitate the maintenance of dual gates at the Property; and

WHEREAS, the City anticipates commencing construction on the Community Path Extension adjacent to the Property in the Spring of 2012; and

WHEREAS, Table 1 of the SPSR decision, setting forth conditions of approval, includes Condition #6, which reads as follows:

No building permits – other than those needed for the retaining Wall along the MBTA right-of-way, ramp from Lowell Street, foundation of Building A, and related grading, drainage, and utility work – will be allowed until an amendment to the Development Covenant has been executed that will revise the construction timeline and phasing in Section F(3) of the existing covenant.

The Planning Board understands that this amendment will include the following elements:

- a. Construction vehicles will use the community path and the Lowell Street entrance only. No construction vehicles will use Clyde Street or Warwick Street at any time.
- b. Employee vehicles will use the Warwick Street and Lowell Street entrances.
- c. Upon completion of the Lowell Street ramp, construction vehicles for Building A will use the Lowell Street access and construction vehicles for buildings B, C, and E will use the community path.
- d. At a point 21 months after the issuance of the first building permit (whether for Buildings A, B, C, or E), all vehicle access via the Community Path will end, and any remaining construction and employee vehicles will use the Lowell Street ramp.

This condition shall not apply to the ~~permits~~ related to Buildings D1, D2, and D3.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereby agree as follows:

1. Section F (3) of the Development Covenant is hereby amended by deleting former Section F(3) and adding a new Section F(3) as follows (deletions are shown as ~~strikeouts~~ and additions are shown as underlined):

F. PROJECT MITIGATION, AMENITIES, AND PHASING.

. . . . .

(3) Project Phasing . . . . .

~~(a) — Phase 1~~

~~Phase 1 of the Project shall consist of the construction of up to 65 residential units (with no more than 110 bedrooms) at the Warwick Street edge of the Property. Phase 1 is estimated to take 18-24 months. The Developer shall use the undeveloped portion of the Community Path between Lowell and Cedar Streets for access and egress of construction vehicles during Phase 1, provided Transit Realty Associates grants the Developer a license to do so, it being understood that this undeveloped portion of the Community Path is under the jurisdiction of the MBTA and not the City. If Phase 1 is not completed prior to the City's commencement of construction of the permanent Community Path between Lowell and Cedar Streets (anticipated to commence in the Spring of 2009), the Developer shall be allowed to use other reasonable means of construction access and shall follow the instructions of the MBTA and the City as to construction access and egress.~~

~~(a) — Phase 2 A:~~

~~Phase 2 A shall consist of construction of the Ramp and foundations and sitework for remaining buildings. Unless otherwise directed by the City, during Phase 2 A all construction vehicles shall enter the site via Warwick Street using the Developer's land adjacent to the Community Path and shall exit the site by making a right hand turn onto Warwick Street and a left hand turn onto Clyde Street. Access for construction vehicles shall be restricted to the Ramp as soon as the Ramp has been constructed to a safe, passable level. Phase 2 A is anticipated to take between 6 to 8 months.~~

~~To facilitate Phase 2 A, the Developer has secured and shall keep current a permit for the Ramp from the Massachusetts Highway Department ("MHD"). The Developer shall continue to comply with the state roadway permit process (which has included numerous meetings with MHD engineering staff over the past two years) to ensure that the Ramp meets all state standards for site lines and public safety and shall cooperate in supplying relevant information as required by the city.~~

~~(c) — Phase 2 B:~~

~~Phase 2 B shall consist of the construction of approximately 65 residential units and associated parking. Construction of Phase 2 B buildings (other than work completed as Phase 2 A) shall not begin until the Ramp has been constructed to a safe, passable level, at which point vehicular traffic related to Phase 2 B shall be restricted to the Ramp. Phase 2 B is estimated to take 12-16 months.~~

~~(d) — Additional Phases:~~

~~Any additional phases shall consist of the construction of the remaining residential units, and access/egress for construction vehicles shall be solely via the Ramp. The total number of units constructed in all phases shall not exceed 199 units.~~

~~(e) Construction Schedule:~~

~~The construction schedule will be determined in a standard large project construction agreement between the City and the Developer during the special permit with site plan review process.~~

F. PROJECT MITIGATION, AMENITIES, AND PHASING.

. . . . .

(3) Project Phasing and Vehicular Access

(a) Phase One (Spring/Summer 2011)

The following construction shall take place during Phase One:

- a ramp (the "Ramp") off Lowell Street down into the Property, the retaining wall along the MBTA right-of-way, and related grading, drainage, and utility work substantially completed;
- Building A and Building E foundations;
- Building A framing; and
- Buildings on the D Parcel.

During Phase One, the Somerville Community Path Extension beginning at Cedar Street shall be used by all construction vehicles at Max Pak Square and the D Parcel until the Ramp is accessible. The following shall be considered "construction vehicles": any vehicle larger than a van or pickup truck; any vehicle, including a van or pickup truck, with more than four tires; any vehicle with anything in tow; any vehicle used for open transport of debris or materials; and any vehicle customarily used in heavy construction work, such as boxtrucks, flatbeds, dumptrucks, concrete mixers, cranes, and excavators. All construction vehicles shall enter the Property via the Community Path Extension and use either the Neutral or Reserve Gate. Construction vehicles working on the D Parcel will cross over MaxPak Square to enter the D Parcel through "Gate C": which may be located anywhere along the property line between Max Pak Square and the D Parcel.

Employee and/or visitor vehicles (i.e., vehicles that are not construction vehicles) may use the Community Path Extension or Warwick Street and Clyde Streets.

A Construction Access and Parking Plan for Phase One is attached hereto as Exhibit A-1 and designates a Neutral Gate and a Reserve Gate at the site. Generally, employee and/or visitor vehicles using the Neutral Gate will endeavor to use the Community Path to enter and exit the site and will park in the location shown on Exhibit A-1. Generally, employee and/or visitors using the Reserve Gate will endeavor to use Warwick Street to enter the site, and Warwick and Clyde Streets to exit the site, and will park in the location shown on Exhibit A-1. In addition to the parking locations shown on Exhibit A-1, employees and visitors for the D Parcel may also park on the D Parcel.

As provided in the original Development Covenant, the Developer shall keep current the permit for the Ramp issued by the Massachusetts Department of

Transportation ("MassDOT"). The Developer shall comply with the state roadway permit process to ensure that the Ramp meets all state standards for site lines and public safety and shall cooperate in supplying relevant information as required by the City.

(b) Phase Two (Summer/Fall 2011)

The following construction shall take place during Phase Two:

- Building B foundation;
- Buildings A and E framing and exterior façades; and
- Buildings on the D Parcel.

During Phase Two, the Developer shall make diligent efforts to evenly distribute construction vehicles between the Community Path Extension beginning at Cedar Street and the Ramp in order to balance the flow of traffic on Cedar and Lowell Streets and associated impacts on neighboring properties; if the City finds that the Developer has not adequately distributed construction vehicle traffic, at the sole discretion of the City, the City may require that the Developer cause all construction vehicles for Building A to use the Ramp; and all construction vehicles for Buildings B and E (and the D Parcel) to use the Community Path Extension beginning at Cedar Street. A Construction Access and Parking Plan for Phase Two is attached hereto as **Exhibit A-2**. Generally, employee and/or visitor vehicles using the Neutral Gate will endeavor to use the Community Path Extension to enter and exit the site and will park in the location shown on Exhibit A-2. Generally, employee and/or visitor vehicles using the Reserve Gate will endeavor to use Warwick Street to enter the site, and Warwick and Clyde Streets to exit the site, and will park in the location shown on Exhibit A-2. In addition to the parking locations shown on Exhibit A-2, employees and visitors for the D Parcel may also park on the D Parcel.

(c) Phase Three (Fall 2011/Winter and Spring 2012)

The following construction shall take place during Phase Three:

- Building C foundation;
- Buildings A, E, B, and C framing & exterior facades;
- Buildings A, E, and B interior work; and
- Buildings on the D Parcel.

During Phase Three, the Developer shall make diligent efforts to evenly distribute access for construction vehicles between the Ramp and the Community Path Extension beginning at Cedar Street in order to balance the flow of traffic on Cedar and Lowell Streets and associated impacts on neighboring properties; if the City finds that the Developer has not adequately distributed construction vehicle traffic, at the sole discretion of the City, the City may require that the Developer cause all construction vehicles for Building A to use the Ramp; and all construction vehicles for Buildings E, B, and C (and the D Parcel) to use the Community Path Extension beginning at Cedar Street, until such time as the City commences construction on the Community Path Extension (anticipated in Spring of 2012); provided however, that even after the City has commenced

construction, the City may in its sole discretion allow some access for construction vehicles provided such vehicles do not interfere with or cause damage to the City work. A Construction Access and Parking Plan for Phase Three is attached hereto as **Exhibit A-3**. Generally, employee and/or visitor vehicles using the Neutral Gate will endeavor to use the Community Path Extension to enter and exit the site and will park in the location shown on Exhibit A-3 until such time as the City commences construction on the Community Path Extension (anticipated in Spring of 2012); provided however, that even after the City has commenced construction, the City may in its sole discretion allow some access for employee and/or visitor vehicles provided such vehicles do not interfere with or cause damage to the City work. Generally, employee and/or visitor vehicles using the Reserve Gate will endeavor to use Warwick Street to enter the site and Warwick and Clyde Streets to exit the site, and will park in the location shown on Exhibit A-3. In addition to the parking locations shown on Exhibit A-3, employees and visitors for the D Parcel may also park on the D Parcel.

Prior to starting Phase Three, City staff and the Developer shall meet to determine if space is needed in the vicinity of the Reserve Gate for protestors. If the City makes a reasonable determination that space is needed, the Developer shall make space available for this purpose.

(d) Phase Four (Spring 2012 thru Fall/Winter 2012)

The following construction shall take place during Phase Four:

- Buildings A, E, B, and C interior work;
- Sitework, landscaping, and paving; and
- Buildings on the D Parcel.

During Phase Four, the Developer shall make diligent efforts to evenly distribute construction vehicles between the Ramp and the Community Path Extension beginning at Cedar Street in order to balance the flow of traffic on Cedar and Lowell Streets and associated impacts on neighboring properties; if the City finds that the Developer has not adequately distributed construction vehicle traffic, at the sole discretion of the City, the City may require that the Developer cause all construction vehicles for Building A to use the Ramp; and all construction vehicles for Buildings E, B, and C (and the D Parcel) to use the Community Path Extension beginning at Cedar Street until such time as the City commences construction on the Community Path Extension (anticipated in Spring of 2012); provided however, that even after the City has commenced construction, the City may in its sole discretion allow some access for construction vehicles provided such vehicles do not interfere with or cause damage to the City work.

**Notwithstanding anything to the contrary in the foregoing sentence,** at a point 21 months after the issuance of the first building permit [whether for Building A (excluding the foundation permit), or Buildings B, C, or E], all vehicular access via the Community Path Extension shall end, and all remaining construction vehicles and employee and/or visitor vehicles shall use the Ramp. A Construction Access and Parking Plan for Phase Four is attached hereto as **Exhibit A-4**. In addition to the parking locations shown on the Exhibit A-4, employees and visitors for the D Parcel may also park on the D Parcel.

2. All employee parking shall occur on site; no employees, even individuals with Somerville resident parking stickers, shall park on nearby neighborhood streets, including but not limited to Clyde, Warwick, Murdock, Alpine, Princeton, Cedar, or Lowell Streets.
3. As soon as authorized by the City's Inspectional Services Division, picketed employee parking shall be relocated to the garages of Buildings A, B, C, and/or E, with overflow parking as needed on the central community greenspace; non-picketed parking may do the same, but is not required to do so until Phase Three and Four pursuant to the above agreement relative to construction of the Community Path Extension. At the same time, visitor vehicles shall be encouraged to park in the garage(s) through the use of on-site signage and through directions to the site provided by the Developer. Employees and visitors for the D Parcel may also park on the D Parcel.
4. There shall be no unreasonable obstruction of traffic on Cedar or Lowell Streets as a result of Developer's construction vehicles at the Property, or at Warwick and Clyde Streets as a result of employee vehicles. If the Developer anticipates a heavy day of such construction traffic, the Developer shall instruct the contractor to hire a police detail to direct traffic. If the City's Traffic and Parking Department determines that there is a need for a traffic detail as a result of the above, the City reserves the right to require such a detail at the Developer's expense.
5. Prior to the start of construction, the Developer shall meet with the City's Inspectional Services Division to agree on procedures for rodent control, watering, provision of bathroom facilities, and so forth.
6. The Developer hereby agrees that construction activities at the Property shall not commence before 7:00 a.m. on weekdays and 9:00 a.m. on Saturdays, and that there shall be no work on Sundays. The term "activities" includes idling, greasing, lubing, radio playing, and any other activity that could be reasonably construed as disturbing to the quiet enjoyment of the residential neighborhood adjacent to the Property. All activities shall cease between the hours of 7:00 pm and 7:00 am on weekdays (and 9:00 am on Saturdays) in strict compliance with the City's Noise Ordinance (Section 9-116.3 of the Code of Ordinances).
7. It is understood and agreed that the the Developer shall make diligent efforts to commence construction at the time set forth herein for each Phase, but that adjustments shall be allowable, except for the requirement that at a point 21 months after the issuance of the first building permit [whether for Building A (excluding the foundation permit) or Buildings B, C, or E], all vehicular access via the Community Path Extension shall end, and all remaining construction vehicles and employee and/or visitor vehicles shall use the Ramp, which time period shall remain firm and may not be extended without the City's prior written consent.
8. For so long as the Developer is using the Community Path Extension, the Developer shall be responsible for maintaining the Community Path Extension, including maintaining at least 5" of gravel in place at all times to ensure that no soil is exposed. The Developer shall add crushed stone as needed. All construction vehicles shall utilize

a wheelwash, which shall be located at the end of the Community Path at Cedar Street. No soil from any vehicle shall be deposited on Clyde, Warwick, Cedar, or Lowell Streets and if it appears that soil is being deposited on any of these streets without street sweeping being performed in a timely manner by Contractor, the City reserves the right to require all vehicles to use the wheelwash. The Developer shall ensure that the Community Path Extension is watered to keep dust at a minimum; further, within 24 hours of communication from the City requesting dust control, watering shall take place.

9. The Developer shall strive to keep noisy activities away from the Warwick and Clyde Street perimeter. Food trucks, lunch gathering places, and port-a-potties shall be required to be located central to the site. Near the perimeter of the property closest to Warwick and Clyde Streets, the Developer shall post signs visible to employees and protesters that encourage all to: be respectful of their residential neighbors; keep noise, and swearing, to a minimum; be aware of pedestrians; and travel on City streets at a safe speed at all times.
10. During the Spring/Summer of 2011 and thereafter, the D Parcel shall be entitled to maintain its own employee and owner entrance from Warwick and Clyde Streets and parking on the D Parcel for showings, open houses and ease of access to and use of the Townhouse property. The location of construction fencing on the Parcel D may be moved as construction proceeds on the D Parcel.
11. If the developers of the D Parcel need to specifically identify "D Parcel Protesters", the developers of the D parcel shall have the right to add an additional gate adjacent to the Neutral Gate at Warwick Street and the Community Path that will allow specific access for D Parcel construction and employee vehicles, subject to review and approval by the Executive Director of OSPCD relative to the location of the gate only.
12. The total number of residential units in Buildings A, E, B, and C shall not exceed 184 units.
13. Except for the change to Section F(3) above, the Covenant is hereby ratified and shall remain in full force and effect.

SIGNATURE PAGE FOLLOWS



EXECUTED UNDER SEAL on the day and year first written above.

**DEVELOPER:**

**Master Clyde Street Acquisition  
Realty Trust**

By:



**Darin S. Samaraweera  
as Trustee and not Individually**

and

By:



**Edward B. Tobin  
as Trustee and not Individually**

**CITY OF SOMERVILLE**

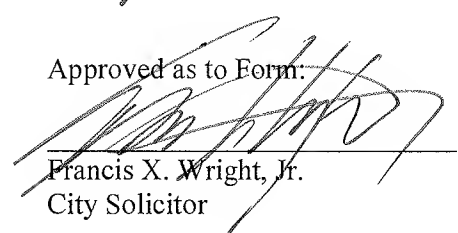
By:

  
**Joseph A. Curtatone**

Its:

**Mayor**

Approved as to Form:

  
**Francis X. Wright, Jr.  
City Solicitor**

Agreed to with respect to the D Parcel:

**The Residences at  
Max Pak Square, LLC**

By:



**Charles Aggouras**

Its:

**Manager**

# Phase One: Spring / Summer 2011

Construction Activities

Lowell Street Entry

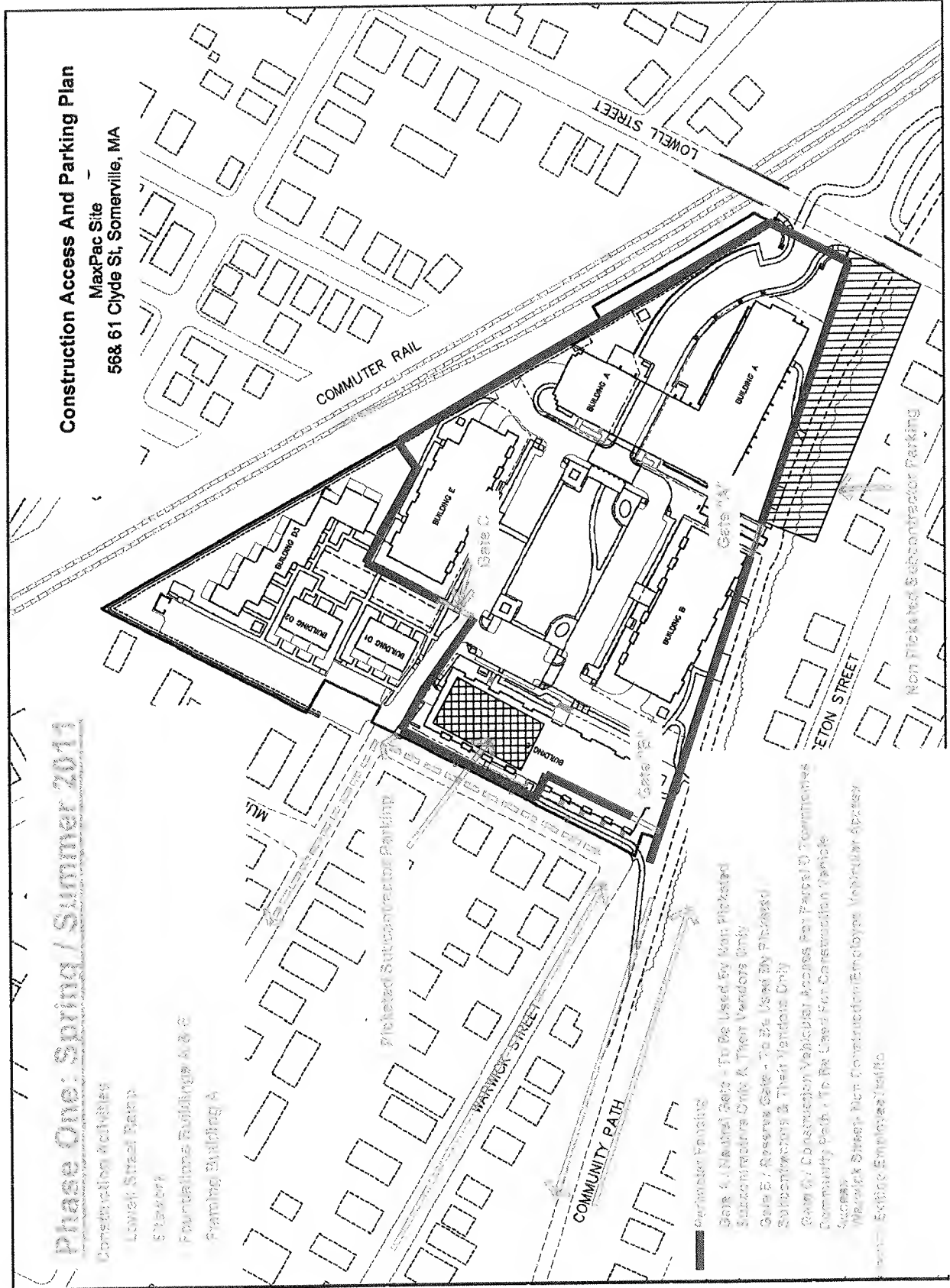
Station

Foundations Buildings A & B

Parking Building A

## Construction Access And Parking Plan

MaxPac Site  
56 & 61 Clyde St, Somerville, MA



- Gate 1: Neutral Gate - To Be Used By Non Picketed Subcontractors Only & Their Vendors Only
- Gate 2: Reverse Gate - To Be Used By Picketed Subcontractors & Their Vendors Only
- Gate 3: Construction Vehicular Access For Picketed Townhomes
- Community Path - To Be Used For Construction Vehicle Access
- Warner Street - Non Construction Employee Vehicular Access
- Exit - Exit Employees Only

# Phase Two: Summer / Fall 2011

Construction Activities

Site Work

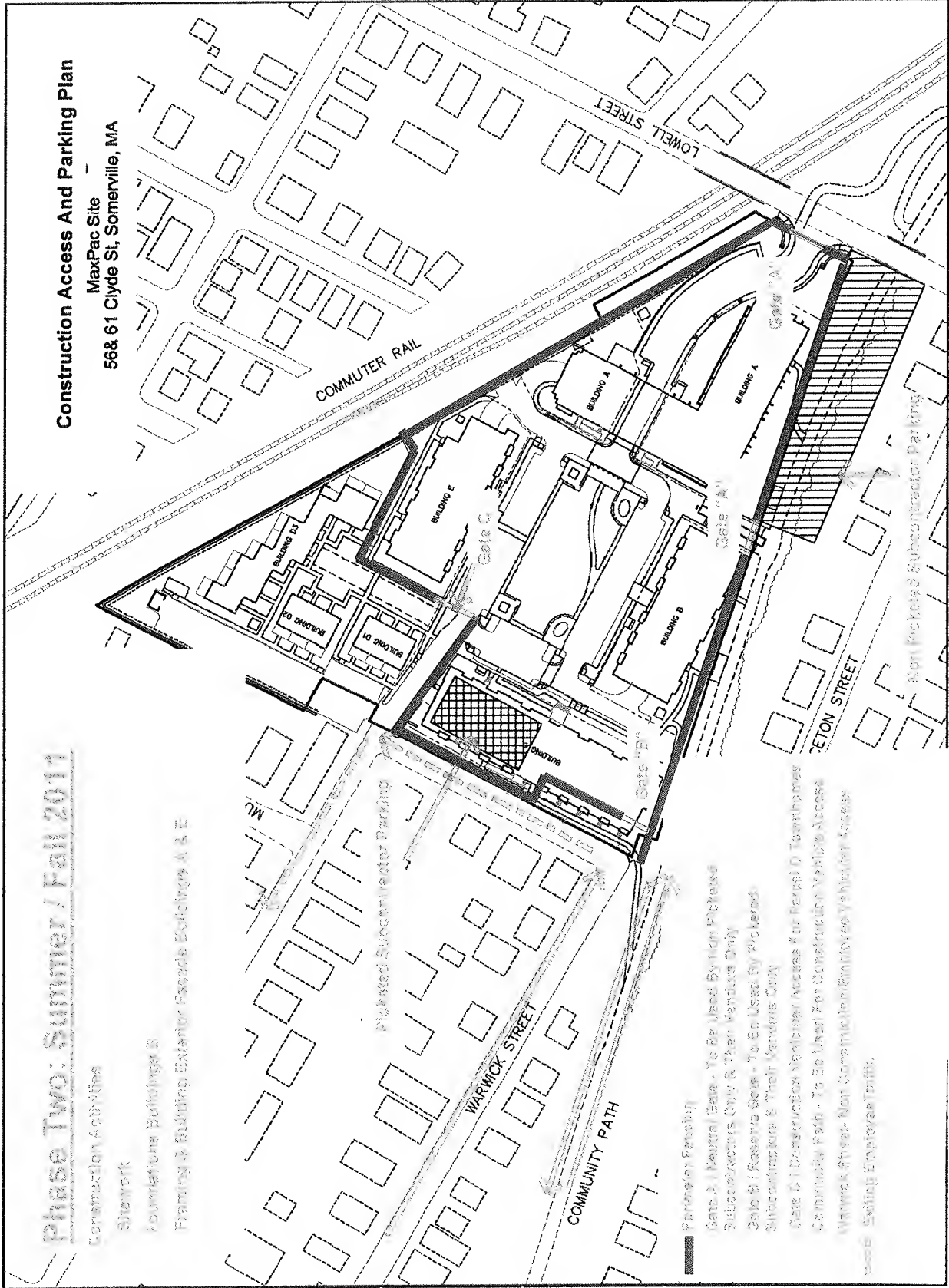
Foundations Building A

Framing & Building Exterior Facade Buildings A & E

## Construction Access And Parking Plan

MaxPac Site

568 61 Clyde St, Somerville, MA



# Phase Three: Fall 2011 / Spring 2012

Construction Activities

Sitework

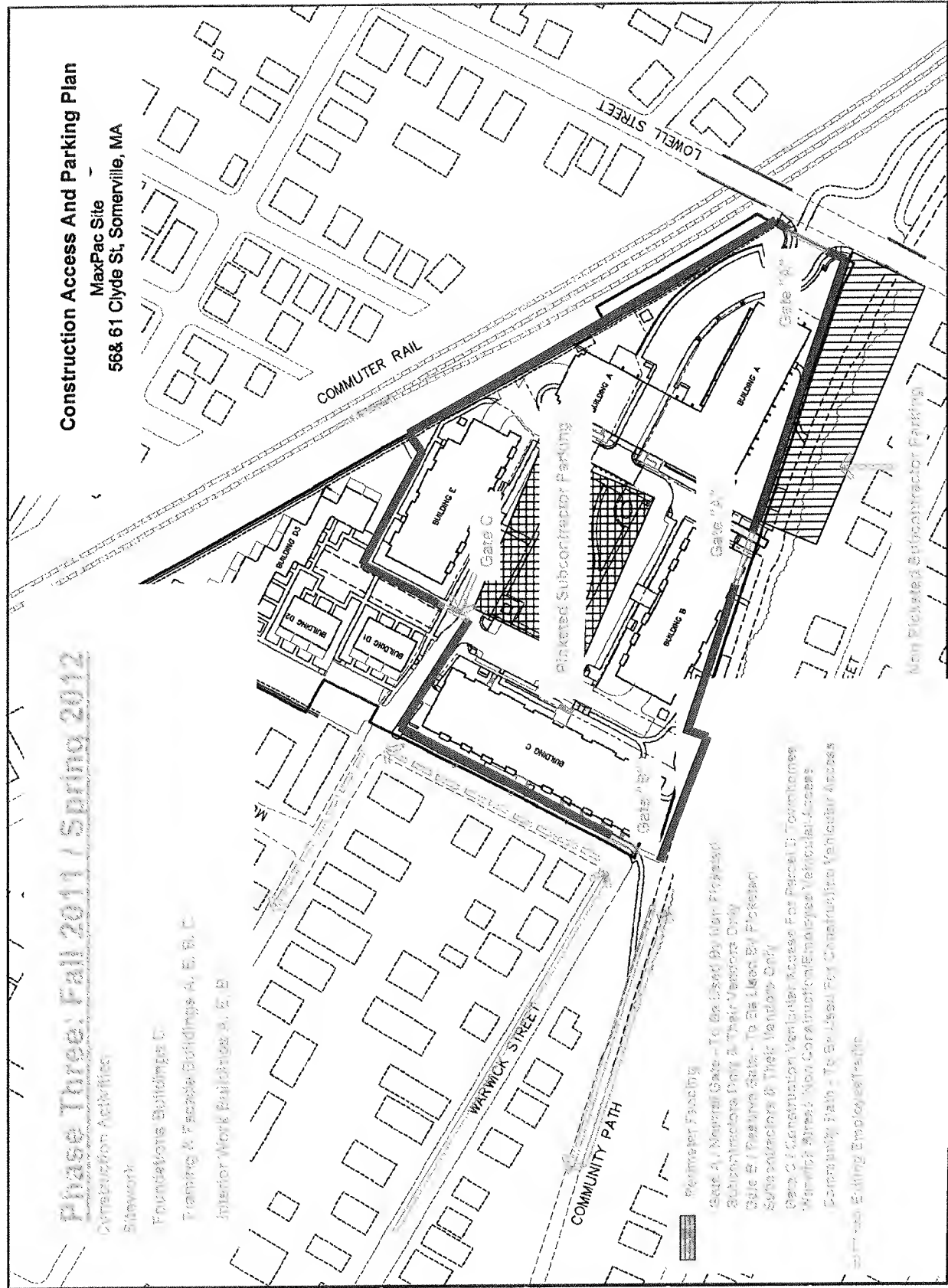
Foundations Buildings C

Trimming & Facade Buildings A, E, B, D

Interior Work Buildings A, E, B

## Construction Access And Parking Plan

MaxPac Site  
568 61 Clyde St, Somerville, MA



# Phase Four: Spring / Fall 2012

Construction Activities

Site Work, Landscaping, Paving

Interior Work, Buildings A, B, C

## Construction Access And Parking Plan

MaxPac Site  
56& 61 Clyde St, Somerville, MA

